

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

MSD CONSUMER PRODUCTS, INC., )  
SANTARUS, INC., and THE CURATORS )  
OF THE UNIVERSITY OF MISSOURI, )  
Plaintiffs, )  
v. )  
ZYDUS PHARMACEUTICALS )  
(USA), INC., )  
Defendant. )  
No. 11-cv-7437 (PGS) (LHG)

## **JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT**

Plaintiffs MSD Consumer Products, Inc., Santarus, Inc. and The Curators Of The University Of Missouri (collectively, “Plaintiffs”) and Defendant Zydus Pharmaceuticals (USA), Inc. (“Zydus”) hereby provide their Joint Claim Construction and Prehearing Statement concerning U.S. Patent No. 7,399,772 (“the ’772 patent” or “the patent-in-suit”) in accordance with Local Patent Rule 4.3 of the United States District Court for the District of New Jersey.

## I. BACKGROUND

This is a Hatch-Waxman Act patent action. Plaintiffs assert, among other things, that Zydus has infringed the patent-in-suit by filing an Abbreviated New Drug Application (“ANDA”) with the U.S. Food and Drug Administration seeking approval to market generic versions of Zegerid® OTC brand pharmaceutical products. Zydus alleges that the asserted claims of the patent-in-suit are invalid and/or not infringed.

## II. CONSTRUCTION OF TERMS

## A. Construction of Terms on Which the Parties Agree

In accordance with Local Patent Rule 4.3(a), the parties have agreed on this

construction:

<b>Claim 1 of U.S. Pat. No. 7,399,772</b>	
<b>Claim Term</b>	<b>Parties' Agreed Construction</b>
“solid pharmaceutical composition”	“a solid dosage form that is pharmaceutically acceptable for storage, shipping, and administration, including a powder than can be combined with an aqueous medium and then orally administered.”

**B. Each Party's Proposed Construction of the Claim Terms in Dispute**

In accordance with Local Patent Rule 4.3(b), the parties have not identified any disputed claim terms.

**C. Claim Terms Whose Construction Will Be Most Significant or Dispositive**

In accordance with Local Patent Rule 4.3(c), the parties do not believe that their agreement on the term “solid pharmaceutical composition” will be case-dispositive or substantially conducive to promoting settlement.

**D. Anticipated Length of Time Necessary for the Claim Construction Hearing and Tutorial**

In accordance with Local Patent Rule 4.3(d), since the parties are in agreement on the above claim term, the parties' view is that a claim construction hearing will not be necessary.

**E. Identification of Witnesses for the Claim Construction Hearing**

Not applicable.

Respectfully submitted,

By their attorneys for Plaintiffs:

s/ Sheila F. McShane

Date: March 28, 2013

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